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**FILED**  
04/17/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41K-0008-R-2022  
White, Eugene  
11.00

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
SUN RIVER BASIN (41K)

\* \* \* \* \*

CLAIMANT: LF Ranch MT LLC

OBJECTOR: LF Ranch MT LLC

NOTICE OF INTENT TO APPEAR: Tee Bar Ranch Co.

**CASE 41K-0008-R-2022**

41K 96311-00

41K 96312-00

41K 96313-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## MASTER'S REPORT

All water right claims that appeared in the Preliminary Decree for Sun River (Basin 41K) were subject to “issue remarks” resulting from pre-decree examination by the DNRC, objections, and counterobjections. Claims 41K 96311-00, 41K 96312-00, and 41K 96313-00 each received a self-objection from the LF Ranch MT LLC and a Notice of Intent to Appear from Tee Bar Ranch Co. The claims also received issue remarks during the DNRC’s review of the claims.

The above-captioned claims were consolidated into Case 41K-0008-R-2022 to resolve the objections, NOIAs, and issue remarks.

### FINDINGS OF FACT

1. On July 19, 2022, the Court consolidated the above-captioned claims and set a filing deadline for the parties to file settlement documents resolving the objection, NOIAs, and issue remarks. That deadline was subsequently extended on four separate occasions

2. On December 29, 2022, the parties filed a *Stipulation*. The *Stipulation* was supplemented by a *Notice of Filing* with additional information filed by LF Ranch MT, LLC on January 4, 2023. The *Stipulation* addresses the issue remark appearing on claim 41K 96311-00 stating that the parties agree that the priority date is correct as shown on the abstracts and that the remark was placed in error. Additionally, the *Stipulation* proposes the following:

#### **41K 96311-00**

a. The following remark should be added to the claim:

THE INCIDENTAL USE OF THIS RIGHT FOR STOCK IS LIMITED TO TIMES WHEN WATER IS DIVERTED FOR IRRIGATION AND DOES NOT PROVIDE AN INDEPENDENT BASIS FOR DIVERSION OF THE RIGHT OR A CALL ON OTHER WATER RIGHTS.

**41K 96312-00**

- a. The following remark should be added to the claim:

THE INCIDENTAL USE OF THIS RIGHT FOR STOCK IS LIMITED TO TIMES WHEN WATER IS DIVERTED FOR IRRIGATION AND DOES NOT PROVIDE AN INDEPENDENT BASIS FOR DIVERSION OF THE RIGHT OR A CALL ON OTHER WATER RIGHTS.

- b. The Point Diversion should be modified as follows:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWSW	25	20N	8W	LEWIS AND CLARK	
Period of Diversion: APRIL 15 TO OCTOBER 15							
Diversion Means: HEADGATE							
Ditch Name: BEACH DITCH							
<del>2</del>		<del>NENESE</del>	<del>26</del>	<del>20N</del>	<del>8W</del>	<del>LEWIS AND CLARK</del>	
<del>Period of Diversion: APRIL 15 TO OCTOBER 15</del>							
<del>Diversion Means: HEADGATE</del>							

**41K 96313-00**

- a. The following remark should be added to the claim:

THE INCIDENTAL USE OF THIS RIGHT FOR STOCK IS LIMITED TO TIMES WHEN WATER IS DIVERTED FOR IRRIGATION AND DOES NOT PROVIDE AN INDEPENDENT BASIS FOR DIVERSION OF THE RIGHT OR A CALL ON OTHER WATER RIGHTS.

3. According to the *Stipulation*, the addition of the above-listed modifications and addition of the information remarks would resolve the LF Ranch's objections and Tee Bar Ranch Co.'s NOIAs to the claims.

4. Claim 41K 96313-00 also received a notice-type issue remark from the DNRC during its claims reexamination.

**PRINCIPLES OF LAW**

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

### CONCLUSIONS OF LAW

1. Based on the information contained in the *Stipulation*, the priority date issue remark should be removed from claim 41K 96311-00. Additionally, the information remark shown in Finding of Fact No. 2 should be added to the abstract of claims. Finally, the pod for claim 41K 96312-00 should be modified as described in Finding of Fact No. 2.

2. The objections and NOIAs appearing on each of the claims should be considered resolved.

3. The notice-type issue remark appearing on claim 41K 96313-00 served its notice purpose and should be removed from the claim.

### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

### **ELECTRONICALLY SIGNED AND DATED BELOW.**

#### *Service Via Electronic Mail:*

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THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

96267-00

96311-00

THE INCIDENTAL USE OF THIS RIGHT FOR STOCK IS LIMITED TO TIMES WHEN WATER IS DIVERTED FOR IRRIGATION AND DOES NOT PROVIDE AN INDEPENDENT BASIS FOR DIVERSION OF THE RIGHT OR CALL ON OTHER WATER RIGHTS.





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